

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Matthew Travis Houston

Plaintiff

v.

Aaron D. Ford, et al.,

Defendants

Case No.: 2:23-cv-01423-APG-EJY

**Order Denying Application to Proceed in
Forma Pauperis and Motions**

(ECF Nos. 1, 4, 5)

On September 12, 2023, plaintiff Matthew Houston, who is incarcerated in the custody of the Nevada Department of Corrections (NDOC), submitted a civil rights complaint under 42 U.S.C. § 1983 and applied to proceed in forma pauperis.¹ He also filed documents titled “Motion to Expedite Screening” and “Emergency Motion for Expeditious Justice” that contain disjointed ramblings about other legal proceedings and fail to seek sensible relief from this court.² Houston was recently declared a vexatious litigant by U.S. District Judge Jennifer Dorsey.³ He’s also amassed over three strikes under the Prison Litigation Reform Act (PLRA).⁴ But because the complaint does not plausibly allege that Houston faced an ongoing danger of serious physical injury when he filed it, he cannot proceed in forma pauperis in this action. I therefore deny Houston’s in forma pauperis application and motions and grant him an extension of time to pay the full \$402 filing fee in this action.

¹ ECF Nos. 1-1, 1.

² ECF Nos. 4, 5.

³ *Houston v. Encore Event Technologies*, Case No. 2:22-cv-01740-JAD-EJY, at ECF No. 30 (D. Nev. Oct. 24, 2023).

⁴ 28 U.S.C. § 1915.

1 **I. Discussion**

2 The Prison Litigation Reform Act provides that no prisoner can “bring a civil action or
3 appeal a judgment in a civil action or proceeding” under in forma pauperis status “if [he] has, on
4 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or
5 appeal in a court of the United States that was dismissed on the grounds that it is frivolous,
6 malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under
7 imminent danger of serious physical injury.”⁵ The Ninth Circuit explained in *Andrews v.*
8 *Cervantes* that the exception to § 1915(g) applies only if the prisoner makes a plausible
9 allegation that he or she faced “an ongoing danger” of serious physical injury “at the time the
10 complaint was filed.”⁶ “The prisoner may meet this requirement by ‘alleging that prison
11 officials continue with a practice that has injured him or others similarly situated in the past,’ or
12 that there is a continuing effect resulting from such a practice.”⁷ If the prisoner satisfies the
13 exception, it applies to the entire complaint, not on a claim-by-claim basis or only for certain
14 types of relief.⁸

15 **A. Houston has amassed at least three strikes under the PLRA.**

16 On August 8, 2019, Houston commenced the civil-rights action styled *Houston v. Howell*,
17 2:19-cv-01371-JAD-DJA (D. Nev.), while he was incarcerated at the NDOC’s Three Lakes
18 Valley Conservation Camp.⁹ The district court dismissed Houston’s complaint for failing to
19 state a claim upon which relief could be granted, and granted him leave to file an amended

20 ⁵ 28 U.S.C. § 1915(g).

21 ⁶ *Andrews v. Cervantes*, 493 F.3d 1047, 1055–56 (9th Cir. 2007).

22 ⁷ *Williams v. Paramo*, 775 F.3d 1182, 1190 (9th Cir. 2015) (cleaned up) (quoting *Andrews*, 493
F.3d at 1057).

23 ⁸ *Andrews*, 493 F.3d at 1052.

⁹ 2:19-cv-01371-JAD-DJA, at ECF Nos. 1, 1-1.

1 complaint if he could cure the stated defects.¹⁰ On June 26, 2020, when Houston failed to file an
 2 amended complaint by the deadline, the district court dismissed the action.¹¹ This constitutes
 3 Houston’s first strike under the PLRA.¹²

4 On November 9, 2022, Houston filed the civil-rights action styled *Houston v. Encore*
 5 *Event Technologies*, Case No. 4:22-cv-00380-RGE-SBJ (S.D. Iowa), while he was incarcerated
 6 at HDSP.¹³ On December 1, 2022, the district court dismissed the action for failing to state a
 7 claim upon which relief could be granted.¹⁴ This constitutes Houston’s second strike under the
 8 PLRA.

9 Two years later, Houston filed notice that he was incarcerated at NDOC’s High Desert
 10 State Prison (HDSP) and appealed the dismissal order in *Houston v. Howell*.¹⁵ On February 23,
 11 2023, the Ninth Circuit dismissed Houston’s appeal as “frivolous.”¹⁶ This constitutes Houston’s
 12 third strike under the PLRA.

13 On October 17, 2022, Houston filed the civil-rights action styled *Houston v. Encore*
 14 *Event Technologies*, Case No. 2:22-cv-01740-JAD-EJY (D. Nev.), while he was incarcerated at
 15 HDSP.¹⁷ On April 13, 2023, the district court dismissed Houston’s “nonsensical” complaint
 16

17 ¹⁰ *Id.* at ECF No. 24.

18 ¹¹ *Id.* at ECF No. 25.

19 ¹² *See Harris v. Mangum*, 863 F.3d 1133, 1143 (9th Cir. 2017) (“[H]old[ing] that when (1) a
 20 district court dismisses a complaint on the ground that it fails to state a claim, (2) the court grants
 leave to amend, and (3) the plaintiff then fails to file an amended complaint, the dismissal counts
 as a strike under § 1915(g).”).

21 ¹³ 4:22-cv-00380-RGE-SBJ, at ECF Nos. 1, 2.

22 ¹⁴ *Id.* at ECF No. 3.

¹⁵ 2:19-cv-01371-JAD-DJA, at ECF Nos. 38, 31.

23 ¹⁶ *Id.* ECF Nos. 39, 40 (order and mandate for Ninth Circuit Case No. 22-16439).

¹⁷ 2:22-cv-01740-JAD-EJY, at ECF Nos. 1, 1-1.

1 with prejudice, finding that it “falls far from stating any claim for relief[.]”¹⁸ This constitutes
 2 Houston’s fourth strike under the PLRA.

3 On October 5, 2022, Houston filed the civil-rights action styled *Houston v. Lombardo*,
 4 Case No. 2:22-cv-01685-JCM-DJA (D. Nev.), while he was incarcerated at HDSP.¹⁹ On
 5 December 14, 2022, the district court dismissed the action because Houston failed to comply
 6 with its order directing him to either file a new fully complete application to proceed in forma
 7 pauperis or pay the full \$402 filing fee.²⁰ This does not constitute a strike under the PLRA. But
 8 Houston unsuccessfully sought to set aside the dismissal order, appealed the orders denying that
 9 effort,²¹ and on September 27, 2023, the Ninth Circuit dismissed his appeal as “frivolous.”²²
 10 This constitutes Houston’s fifth strike under the PLRA. But because Houston’s appeal was
 11 dismissed after he commenced this action, I do not count it as a strike here.

12 **B. Houston’s complaint does not satisfy § 1915(g)’s exception.**

13 As outlined above, on more than three occasions before Houston initiated this action, a
 14 federal court dismissed civil actions and appeals that Houston commenced while he was detained
 15 or incarcerated because the proceedings were frivolous or failed to state a claim upon which
 16 relief could be granted. So to be granted in forma pauperis status and proceed in this action
 17 without prepaying the full \$402 filing fee, Houston’s complaint must plausibly allege that he
 18 faced “imminent danger of serious physical injury” when he filed it.²³

19 _____
 20 ¹⁸ *Id.* at ECF No. 19.

21 ¹⁹ 2:22-cv-01685-JCM-DJA, at ECF Nos. 1, 1-1.

22 ²⁰ *Id.* at ECF Nos. 13, 20, 23 (order denying application, report and recommendation (R&R) to
 dismiss action for failure to comply with court order, and dismissal order adopting R&R).

23 ²¹ *Id.* at ECF No. 32.

²² *Id.* at ECF Nos. 34, 35 (order and mandate for Ninth Circuit Case No. 23-15298).

²³ 28 U.S.C. § 1915(g).

Houston's complaint is a hodge podge of allegations that federal judges violated his rights by ruling against him in habeas proceedings, government officials and police officers in Las Vegas conspired to have him falsely arrested and imprisoned in 2016 and 2021, and law enforcement assaulted him nearly 30 years ago in Iowa.²⁴ There are no factual allegations that Houston faced "an ongoing danger" of "serious physical injury" when he filed the complaint.²⁵ Because the complaint does not satisfy § 1915(g)'s imminent-danger exception, Houston must pre-pay the full \$402 filing fee if he wants to proceed with this civil-rights action.

II. Conclusion

I THEREFORE ORDER that Houston's application to proceed in forma pauperis (**ECF No. 1**) is **DENIED**.

I FURTHER ORDER that this action will be dismissed without prejudice unless Houston pays the full \$402 filing fee **by December 4, 2023**.

I FURTHER ORDER that Houston's motions for various relief (**ECF Nos. 4, 5**) are **DENIED**.

I FURTHER ORDER that the Clerk of the Court will send plaintiff Matthew Travis Houston two copies of this order. Houston will make the necessary arrangements to have one copy of this order attached to the check paying the filing fee.

DATED this 1st day of November, 2023.


 ANDREW P. GORDON
 UNITED STATES DISTRICT JUDGE

²⁴ ECF No. 1-1.

²⁵ The 228 pages of documents that Houston filed with his "Supplement to Civil Rights Complaint" do not merit a different conclusion. *See* ECF No. 6.